IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3778 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT ELECTRICITY BOARD

Versus

STATE OF GUJARAT

Appearance:

MR SP HASURKAR for Petitioner No. 1-2

Mr.R.V. Desai, A.G.P. for Respondent No. 1

MR TR MISHRA for Respondent No. 2

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 26/07/2001

ORAL JUDGEMENT

Rule. Mr.T.R. Mishra, learned advocate waives service of rule.

2. The present petition is filed mainly against order dated 7.5.2001, Annexure 'A' to the petition passed

by the Deputy Labour Commissioner, Ahmedabad making a reference. The main challenge is on the ground that earlier this very authority had refused to make a reference by order dated 30.4.2001, which is produced at Annexure 'C'. Mr.Hasurkar, learned advocate for the petitioners has amended the petition and has also added a prayer to the effect that order dated 8.5.2001 which is produced at Annexure 'E' passed by the learned Industrial Tribunal, Ahmedabad in Reference (ITC) No.78 of 2001, may also be quashed and set aside. The main petition challenges the order of making a reference. The contention of Mr.Hasurkar is that when the same authority has passed an order dated 30.4.2001 and there being no change in the circumstances, there was no reason to review its own earlier order dated 7.5.2001.

3. Mr.T.R. Mishra, learned advocate appearing for respondent no.2, Akhil Gujarat Vidyut Kamdar Sangh, relied upon a judgement of the Apex Court in the matter between Sultan Singh v. State of Haryana & another, 1996 II LLJ 879, wherein the Apex Court has held that making a reference under sec.10(1) of the Industrial Disputes Act, 1947 is a matter of power of the Government. It is also held that an order made while exercising the power by the government is an administrative order and not a quasi judicial order. It is further held that the employer has no right to get notice or an opportunity of being heard. The Apex Court further held that it is for the appropriate Government to decide as to whether an industrial dispute exists or is apprehended and the decision of the appropriate Government is based on its 'subjective satisfaction'. The employer is not entitled to any notice, nor an opportunity of hearing is to be given to him before making or refusing to make a reference. What is important for the present case is that the Apex Court has held that the appropriate Government is not to issue notice to the employer or hear him before making a reference after reconsidering its earlier decision not to make a reference. (emphasis supplied)

4. Mr.Mishra, learned advocate submitted that there are number of other decisions, but right now he has on hand the judgement of the High Court of Delhi, in the case of National Council of Applied Economic Research Parisila Bhawan, Indraprastha Estate, New Delhi v. Delhi Administration and others, reported in 1986 II LLJ 90, wherein also the the High Court has taken the same view. He further submitted that this is the consistent view taken by other High Courts also in number of cases. Mr.Hasurkar, learned advocate for the petitioners in this

case is not in a position to point out any contrary decision.

4. Mr.Hasurkar, learned advocate submitted that the petition may be entertained against the decision of the Industrial Court, which he has challenged by making an amendment. The same is only a consequential order passed by the Industrial Court exercising its discretion. However, the petitioner being aggrieved of that order may file a substantive petition setting out in detail the grounds of challenge.

5. This petition fails. The authorities have not committed any irregularity or illegality in passing order dated 7.5.2001 after having passed order dated 30.4.2001.

6. The Special Civil Application is rejected. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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